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STATEMENT OF

ADMIRAL STANSFIELD TURNER

DIRECTOR OF CENTRAL INTELLIGENCE

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

ON

S. 2284

THE "NATIONAL INTELLIGENCE ACT OF 1980"

FEBRUARY 21, 1980

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MR. CHAIRMAN, I AM PLEASED TO BE HERE TODAY TO LEAD OFF THE ADMINISTRATION'S TESTIMONY WITH RESPECT TO THE PROPOSED CONGRESSIONAL CHARTERS FOR THE INTELLIGENCE COMMUNITY. FOR THE ENTIRE THREE YEARS THAT I HAVE BEEN THE DIRECTOR OF CENTRAL INTELLIGENCE, I HAVE BEEN A STRONG SUPPORTER OF THESE CHARTERS.

THE FIRST REASON FOR THIS IS THE FACT THAT THE GUIDING LEGISLATION TODAY IS INCOMPLETE. IT IS THE NATIONAL SECURITY ACT OF 1947 AS AMENDED. THE EVOLUTION OF THE UNITED STATES INTELLIGENCE COMMUNITY IN THE INTERVENING YEARS HAS NOT CONFORMED WITH THE IMAGE WHICH THE CONSTRUCTERS OF THAT LEGISLATION HAD IN MIND; CLEARLY, WE ARE NOT DOING ANYTHING ILLEGAL OR IN CONTRADICTION TO THOSE LAWS, BUT THE PICTURE THEY PORTRAY OF WHAT THE INTELLIGENCE COMMUNITY IS AND HOW IT FUNCTIONS SIMPLY HAS NOT WORKED OUT IN PRACTICE. I BELIEVE THAT IT IS IMPORTANT THAT THE CONGRESS ENUNICATE TO US AND TO THE AMERICAN PEOPLE WHAT KIND OF AN INTELLIGENCE COMMUNITY IT EXPECTS AND WANTS.

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SECONDLY, INTELLIGENCE IS BY ITS VERY NATURE A RISK-TAKING BUSINESS. THE INTELLIGENCE PROFESSIONALS OF OUR COUNTRY ARE TRAINED TO TAKE THOSE RISKS ON BEHALF OF THE COUNTRY. THEY DESERVE, I BELIEVE, AS EXPRESS A DESCRIPTION OF WHAT THEY ARE EXPECTED TO DO AND NOT TO DO AS IT IS HUMANLY POSSIBLE TO CREATE. THERE ARE DEFINITE LIMITATIONS AS TO HOW SUCH AUTHORITIES AND RESTRICITONS CAN BE EXPRESSED, BUT WE OWE IT TO OUR INTELLIGENCE OFFICERS TO GIVE THEM THE BEST GUIDANCE WE CAN. THEY WILL STILL NECESSARILY HAVE TO ASSUME CONSIDERABLE INITIATIVE AND RISK ON THEIR OWN, BUT WE SHOULD PROVIDE THEM ALL THE SUPPORT THAT IS POSSIBLE.

THIRDLY, IN THE LAST FIVE OR SIX YEARS WE HAVE BEEN MOVING TO AN EXCITING AND IMPORTANT NEW CONCEPT IN THE WORLD OF INTELLIGENCE. THIS IS THE CONCEPT OF CLOSE CONGRESSIONAL OVERSIGHT OF THE INTELLIGENCE PROCESS. IT IS THE COMPLEMENT TO THE AUTHORIZATIONS AND THE RESTRICTIONS WHICH SHOULD BE ENUNCIATED IN A CHARTER. IN SHORT, THROUGH OVERSIGHT THE

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CONGRESS CAN AND SHOULD CHECK ON WHETHER THE AUTHORIZATIONS ARE BEING USED TO GOOD ADVANTAGE AND WHETHER THE RESTRICITONS ARE, IN FACT, BEING FOLLOWED IN THEIR SPIRIT AS WELL AS THEIR LETTER. UNDER THIS CONCEPT OF INTELLIGENCE, IT IS POSSIBLE TO AVOID SUCH DETAILED AND SPECIFIC RESTRICTIONS AS WOULD HOBBLE OUR INTELLIGENCE OPERATIONS BEYOND USEFULNESS. THIS NEW AND IMPORTANT CONCEPT OF THE COMPLEMENTARITY OF AUTHORIZATIONS AND RESTRICTIONS ON THE ONE HAND, AND OVERSIGHT ON THE OTHER, NEEDS TO BE CLEARLY ENUNCIATED BY THE CONGRESS. ONLY THEN CAN THE CITIZENS OF OUR COUNTRY READILY UNDERSTAND HOW THE CONGRESS IS EXERCISING ITS RESPONSIBILITIES IN AN AREA WHERE, DUE TO THE REQUIREMENTS OF SECRECY, THE PUBLIC CANNOT BE ADEQUATELY INFORMED TO MAKE ITS OWN JUDGMENT.

FOURTH, AND FINALLY, IT IS VERY IMPORTANT THAT THE INTELLIGENCE COMMUNITY OF OUR COUNTRY BE GIVEN GREATER PROTECTION FOR ITS NECESSARY SECRETS. THERE IS NO ISSUE OF HIGHER IMPORT TO THE SUCCESS OF OUR NECESSARY INTELLIGENCE

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EFFORTS TODAY. THE CHARTER LEGISLATION IS A PROPER AND IMPORTANT VEHICLE FOR PROVIDING THE NECESSARY PROTECTION TO WHAT WE REFER TO AS OUR SOURCES AND METHODS OF COLLECTING INTELLIGENCE AND TO SUBSTANTIVE INTELLIGENCE INFORMATION ITSELF. ANY INTELLIGENCE APPARATUS THAT CANNOT CONDUCT SENSITIVE OPERATIONS IN SECRECY CANNOT OFFER HUMAN SOURCES ASSURANCES THAT THEIR COOPERATION WITH THE UNITED STATES WILL REMAIN SACROSANCT. IT ALSO CANNOT GIVE ASSURANCES OF WITHHOLDING FROM PUBLIC EXPOSURE PRIVATE SENSITIVE INFORMATION, THE EXCLUSIVE POSSESSION OF WHICH IS OF GREAT VALUE TO OUR POLICYMAKERS . WITHOUT THE ABILITY TO PROVIDE THESE ASSURANCES WE SIMPLY WILL NOT BE ABLE TO PRODUCE THE KIND OF INTELLIGENCE THAT OUR NATION MUST HAVE IF WE ARE TO CONDUCT OUR FOREIGN POLICY SUCCESSFULLY. THE BOUNDARY LINE BETWEEN PROVISIONS FOR ADEQUATE SECRECY ON THE ONE HAND AND SUFFICIENT CONGRESSIONAL OVERSIGHT AND PROTECTION FOR THE RIGHTS OF THE AMERICAN CITIZEN

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ON THE OTHER IS A NARROW ONE. IT CAN BE DRAWN TO PROTECT ALL OF THESE INTERESTS, BUT ALL THREE INTERESTS MUST BE KEPT IN MIND IN THAT PROCESS.

WHEN THIS COMMITTEE INTRODUCED ITS ORIGINAL CHARTER BILL S. 2525, SOME TWO YEARS AGO, WE ALL RECOGNIZED THAT AN EXTENDED PERIOD OF NEGOTIATION AMONG INTELLIGENCE COMMUNITY OFFICERS, COMMITTEE STAFF, AND ADMINISTRATION OFFICIALS WOULD BE REQUIRED TO ACHIEVE THE RIGHT BALANCE BETWEEN THESE THREE INTERESTS. IT HAS BEEN A LONG AND ARDUOUS PROCESS, BUT I BELIEVE THAT ALL THOSE WHO HAVE TAKEN PART IN THESE NEGOTIATIONS CAN BE PLEASED WITH THE RESULTS WE HAVE BEFORE US TODAY. IT IS PARTICULARLY SIGNIFICANT THAT THERE HAS BEEN AN EVOLUTION FROM AN EMPHASIS ON OVERLY SPECIFIC RESTRICTIONS TO THE SYSTEM OF OVERSIGHT AND ACCOUNTABILITY.

UNFORTUNATELY, SEVERAL OUTSTANDING SUBSTANTIVE ISSUES HAVE PREVENTED THE INTRODUCTION OF A BILL WHICH COULD BE

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FULLY SUPPORTED BY THE INTELLIGENCE COMMUNITY AND THE ADMINISTRATION. IN PART, THESE DIFFERENCES ARE OVER WHETHER THE DRAFT BILL ADEQUATELY PROVIDES PROTECTION FOR OUR NECESSARY SECRETS. OTHER DIFFERENCES RELATE TO WHETHER WE WOULD HAVE THE FLEXIBILITY AND THE CAPACITY TO ACT WITH NECESSARY DISPATCH IN CRISIS SITUATIONS. STILL, I CERTAINLY AGREE WITH THE REMARKS OF THE PRESIDENT THAT THE SUBSTANTIAL AGREEMENT WE HAVE ALREADY ACHIEVED PLACES US WELL ON THE ROAD TO RESOLVING THE REMAINING DIFFERENCES. LET ME ADDRESS THOSE DIFFERENCES SPECIFICALLY.

FIRST, I AM TROUBLED BY THE ORGANIZATION OF THE BILL. I BELIEVE THAT IT IS IMPORTANT THAT INTELLIGENCE CHARTER LEGISLATION FOLLOW THE LOGICAL SEQUENCE OF DEALING SUCCESSIVELY WITH AUTHORITIES, STANDARDS OF CONDUCT, AND THE SYSTEM OF OVERSIGHT AND ACCOUNTABILITY. I THINK THAT THE ORGANIZATIONAL STRUCTURE OF S. 2284 TENDS TO OBSCURE THE OVERSIGHT PROCESS

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SOMEWHAT BUT THAT THESE STRUCTURAL PROBLEMS CAN BE EASILY REMEDIED.

SECOND, A COMPREHENSIVE CHARTER SHOULD CONTAIN AUTHORITY FOR THE PRESIDENT TO WAIVE ANY PROVISION OF THAT ACT IN TIME OF WAR OR DURING A PERIOD COVERED BY A REPORT TO THE CONGRESS UNDER THE WAR POWERS RESOLUTION, TO THE EXTENT NECESSARY TO CARRY OUT THE ACTIVITIES COVERED BY THE REPORT. THE ONLY SUCH AUTHORITY IN S. 2284 IS FOR A LIMITED WARTIME WAIVER OF THE PROHIBITION ON COVER USE OF CERTAIN INSTITUTIONS. THIS IS INSUFFICIENT. S. 2284 STILL CONTAINS A VARIETY OF RESTRICTIONS AND REQUIREMENTS, BOTH PROCEDURAL AND SUBSTANTIVE WHICH IN TIME OF WAR COULD IMPEDE NECESSARY ACTION. THE ADMINISTRATION FAVORS A WARTIME WAIVER WHICH WOULD DEAL WITH EXIGENT CIRCUMSTANCES, WHILE AT THE SAME TIME PREVENTING ANY POTENTIAL ABUSE BY REQUIRING NOTIFICATION TO THE SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE WHEN THE PROVISION IS INVOKED. THE PROVISION FAVORED BY THE ADMINISTRATION IS SET FORTH IN AN APPENDIX TO MY STATEMENT.

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THIRD, THE ADMINISTRATION BELIEVES THAT THE REQUIREMENT FOR REPORTING OF SIGNIFICANT ANTICIPATED INTELLIGENCE ACTIVITIES, INCLUDING SPECIAL ACTIVITIES OR COVERT ACTIONS, IS UNNECESSARY, IMPROPER AND UNWISE. CONSEQUENTLY, IT CANNOT SUPPORT SECTIONS 142 AND 125 AS THEY ARE NOW WRITTEN. TO BEGIN WITH, I BELIEVE THAT THIS COMMITTEE AND THE HOUSE PERMANENT SELECT COMMITTEE HAVE BEEN KEPT FULLY AND CURRENTLY INFORMED OF SIGNIFICANT ACTIVITIES UNDERTAKEN BY THE INTELLIGENCE COMMUNITY. I AM NOT AWARE OF ANY COMPLAINT BY THE SELECT COMMITTEES, OR OF ANY INADEQUACY WITH CURRENT OVERSIGHT WHICH PREVENTS THE COMMITTEES FROM FULFILLING THEIR RESPONSIBILITIES.

IN ADDITION, IT WOULD BE IMPROPER TO ATTEMPT TO IMPOSE SUCH REQUIREMENTS IN STATUTE. SUCH STATUTORY REQUIREMENTS WOULD AMOUNT TO EXCESSIVE INTRUSION BY THE CONGRESS INTO THE PRESIDENT'S EXERCISE OF HIS POWERS UNDER THE CONSTITUTION. THE ADMINISTRATION FAVORS ALTERNATIVE PROVISIONS WHICH WOULD CONFIRM EXISTING OVERSIGHT ARRANGEMENTS BY REQUIRING THAT

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THE INTELLIGENCE COMMITTEES BE KEPT FULLY AND CURRENTLY INFORMED OF THE ACTIVITIES OF THE INTELLIGENCE COMMUNITY. SUCH PROVISONS WOULD CONTINUE THE CURRENT REPORTING STANDARD UNDER THE HUGHES-RYAN AMENDMENT BY REQUIRING THAT SPECIAL ACTIVITIES BE REPORTED "IN A TIMELY FASHION," BUT WOULD LIMIT SUCH REPORTING TO THE SENATE AND HOUSE SELECT COMMITTEES ON INTELLIGENCE.

PRIOR REPORTING WOULD REDUCE THE PRESIDENT'S FLEXIBILITY TO DEAL WITH SITUATIONS INVOLVING GRAVE DANGER TO PERSONAL SAFETY, OR WHICH DICTATE SPECIAL REQUIREMENTS FOR SPEED AND SECRECY. ON THE OTHER HAND, ACTIVITIES WHICH WOULD HAVE LONG-TERM CONSEQUENCES, OR WHICH WOULD BE CARRIED OUT OVER AN EXTENDED PERIOD OF TIME, SHOULD GENERALLY BE SHARED WITH THE CONGRESS AT THEIR INCEPTION, AND I WOULD HAVE NO OBJECTION TO MAKING THIS POINT IN THE LEGISLATIVE HISTORY.

CERTAIN FACETS OF INTELLIGENCE COLLECTION ARE BY THEIR VERY NATURE RISK-TAKING VENTURES. BY RISKS I MEAN THAT

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EITHER THE LIVES AND REPUTATIONS OF INDIVIDUALS ARE AT STAKE AND/OR THAT THE PRESTIGE AND POSITION OF THE UNITED STATES WITH RESPECT TO OTHER NATIONS COULD BE ENDANGERED. THERE ARE CLEARLY SITUATIONS IN WHICH I PERSONALLY WOULD NOT ASK AN INDIVIDUAL TO ACCEPT SUCH RISKS TO HIS WELFARE OR PLACE THE REPUTATION OF THE UNITED STATES ON THE LINE IF I WERE REQUIRED TO REPORT SUCH INTENTION TO MORE MEMBERS OF THE CONGRESS AND THEIR STAFFS THAN I WOULD PERMIT PERSONS WITHIN THE CIA TO BE PRIVY TO THIS INFORMATION. MOREOVER, WE MUST ALSO RECOGNIZE THAT RIGID STATUTORY REQUIREMENTS REQUIRING FULL AND PRIOR CONGRESSIONAL ACCESS TO INTELLIGENCE INFORMATION WILL HAVE AN INHIBITING EFFECT UPON THE WILLINGNESS OF INDIVIDUALS AND ORGANIZATIONS TO COOPERATE WITH OUR COUNTRY. IN SHORT, IT MAY NOT ONLY BE A CASE OF MY UNWILLINGNESS TO ASK INDIVIDUALS TO ACCEPT RISKS: THOSE INDIVIDUALS SIMPLY MAY NOT BE WILLING TO TAKE THEM.

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OUR FOURTH CONCERN IS THAT SECTION 142 OF THE BILL FAILS TO SPECIFICALLY MENTION THE DUTY OF THE DNI TO PROTECT INTELLIGENCE SOURCES AND METHODS. OUR ABILITY TO RECRUIT FOREIGN SOURCES AND TO DEAL WITH FRIENDLY FOREIGN INTELLIGENCE SERVICES WOULD BE SIGNIFICANTLY IMPAIRED BY THE SIGNAL THAT THE OMISSION OF THIS LONGSTANDING PROVISION WOULD GIVE. THIS LANGUAGE HAS BEEN A BACKBONE OF OUR ASSURANCES TO SUCH INDIVIDUALS AND ORGANIZATIONS THAT THE DNI CAN AND WILL PROVIDE PROTECTION FOR THEIR LEGITIMATE INTERESTS. ACCORDINGLY, THE ADMINISTRATION FAVORS PROVISIONS CONCERNING OVERSIGHT OF SIGNIFICANT INTELLIGENCE ACTIVITIES THAT ARE DIFFERENT THAT THOSE OF S. 2284, AND SUCH PROVISIONS ARE SET FORTH IN THE APPENDIX.

WHILE I RECOGNIZE THAT THERE IS AN ARGUMENT WHICH SOUNDS MOST REASONABLE THAT THE CONGRESS SHOULD BE ENTITLED TO ACCESS TO ALL INTELLIGENCE INFORMATION, I WOULD LIKE TO POINT OUT THAT THE PRACTICAL IMPACT OF SUCH A PROVISION IN THIS LEGISLATION COULD BE VERY HARMFUL. TO BEGIN WITH, THE

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KINDS OF INFORMATION WE WOULD WISH TO WITHHOLD ARE THE KINDS OF INFORMATION WHICH THIS COMMITTEE HAS SAGACIOUSLY AND CONSISTENTLY INDICATED IT WOULD NEVER SEEK TO OBTAIN. THE NAMES OF HUMAN SOURCES OF INFORMATION IS ONE GOOD EXAMPLE. ON THE OTHER HAND, THE INCLUSION OF A PROVISION THAT WOULD THEORETICALLY REQUIRE US TO PROVIDE SUCH A NAME COULD HAVE A VERY CHILLING EFFECT UPON THE CONFIDENCE WE CAN INSTILL IN SUCH INDIVIDUALS THAT WORKING WITH US IS A REASONABLY SAFE PROPOSITION. WE ARE ASKING YOU FOR RELIEF FROM THE HUGHES-RYAN AMENDMENT, FROM THE MORE ONEROUS PROVISIONS OF THE FREEDOM OF INFORMATION ACT, AND FOR LEGISLATION TO DEAL WITH INSTANCES OF THE REVELATION OF THE IDENTITIES OF OUR PERSONNEL. ALL OF THESE MEASURES WILL BE OF GREAT ASSISTANCE TO US IN DEVELOPING CONFIDENCE IN FOREIGN INDIVIDUALS AND INTELLIGENCE SERVICES. THE INCLUSION OF A PROVISION FOR ALL-ENCOMPASSING ACCESS TO OUR DATA WOULD RUN DIRECTLY CONTRARY TO THESE STEPS AND WOULD IN LARGE MEASURE NULLIFY THEM.

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FIFTH, ANOTHER PROVISION OF THE BILL THAT STANDS OUT AS AN EXAMPLE OF UNWARRANTED LIMITATION OF FLEXIBILITY IS SECTION 132, CONCERNING INTELLIGENCE RELATIONSHIPS WITH CERTAIN PRIVATE INSTITUTIONS. WHILE THE PROVISION DOES NOT PROHIBIT RELATIONSHIPS WITH INDIVIDUALS WHO ARE MEMBERS OF MEDIA, RELIGIOUS, OR ACADEMIC ORGANIZATIONS OR EXCHANGE PROGRAMS, IT PROHIBITS THE ESTABLISHMENT OR MAINTENANCE OF ANY COVER INVOLVING THOSE GROUPS. I SHARE THE VIEW OF CONGRESS THAT THESE INSTITUTIONS PLAY AN IMPORTANT ROLE IN OUR DEMOCRACY AND MUST HAVE THEIR INDEPENDENCE PRESERVED. THE CENTRAL INTELLIGENCE AGENCY ITSELF TOOK STEPS SOME TIME AGO TO REGULATE INTELLIGENCE RELATIONSHIPS WITH THESE INSTITUTIONS AND THEIR MEMBERS. OUR SELF-IMPOSED REGULATION FOR ALL PRACTICAL PURPOSES PROHIBITS COVER USE OF THESE GROUPS OR

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PAID USE OF THEIR MEMBERS. SUCH PROHIBITIONS SHOULD NOT BE ENACTED AS LAW, HOWEVER. THERE CAN ARISE UNIQUE CIRCUMSTANCES IN WHICH INTELLIGENCE RELATIONSHIPS WITH MEMBERS OF THESE INSTITUTIONS ARE NOT ONLY WARRANTED, BUT MAY BE THE ONLY MEANS AVAILABLE FOR ACCOMPLISHING IMPORTANT INTELLIGENCE OBJECTIVES. IN SUCH CIRCUMSTANCES, INTERNAL REGULATIONS PERMIT WAIVER OF THE GENERAL PROHIBITIONS AGAINST THE USE OF THESE GROUPS. I HAVE GRANTED SUCH WAIVERS ON RARE OCCASIONS. IN ORDER TO MAINTAIN THIS FLEXIBILITY THERE SHOULD BE NO BLANKET PROHIBITION IN STATUTE. IN THIS REGARD, IT MAKES LITTLE SENSE TO DISTINGUISH BETWEEN ACTUAL INTELLIGENCE RELATIONSHIPS WITH MEMBERS OF SUCH GROUPS AND THE ESTABLISHMENT AND USE OF COVER. WHILE COVER USE SHOULD BE KEPT TO AN ABSOLUTE MINIMUM, CIRCUMSTANCES ARE CONCEIVABLE IN WHICH SUCH USE WOULD BE THE ONLY MEANS AVAILABLE TO THE GOVERNMENT IN A SITUATION OF THE HIGHEST URGENCY AND NATIONAL IMPORTANCE. THE WAY TO DEAL WITH SUCH SITUATIONS IS THROUGH INTERNAL GUIDELINES. THUS, THE ADMINISTRATION CANNOT

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SUPPORT SECTION 132 AS WRITTEN. COVER AND INTELLIGENCE RELATIONSHIPS INVOLVING THESE INSTITUTIONS SHOULD INSTEAD BE REGULATED BY EXECUTIVE BRANCH GUIDELINES. THESE GUIDELINES WOULD BE AVAILABLE TO THE SELECT COMMITTEES, AS IS NOW THE CASE.

SIXTH, A MAJOR SHORTCOMING OF S. 2284 IS ITS FAILURE TO ADEQUATELY CONFIRM OUR ABILITY TO PROTECT INTELLIGENCE SOURCES AND METHODS, AND TO ENSURE THE NECESSARY SECRECY FOR INTELLIGENCE ACTIVITIES. THERE ARE TWO MAJOR AREAS OF CONCERN HERE. ONE IS THE FREEDOM OF INFORMATION ACT AND THE OTHER IS THE UNAUTHORIZED DISCLOSURE OF IDENTITIES OF INTELLIGENCE PERSONNEL.

WE MUST RECOGNIZE THAT IT IS INAPPROPRIATE TO APPLY GOVERNMENT-WIDE FREEDOM OF INFORMATION AND PUBLIC DISCLOSURE CONCEPTS TO INTELLIGENCE INFORMATION THAT MUST REMAIN SECRET. WHILE THE BILL EXEMPTS CERTAIN CIA OPERATIONAL AND TECHNICAL FILES FROM THE SEARCH, REVIEW, AND DISCLOSURE

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REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT, EXCEPT FOR REQUESTS BY U.S. PERSONS FOR INFORMATION ON THEMSELVES, IT FAILS TO PROVIDE ANY RELIEF FOR NSA, THE FBI, AND OTHER INTELLIGENCE COMMUNITY COMPONENTS. THE SAME PROBLEMS WHICH FACE THE CIA IN THIS REGARD FACE THE OTHER INTELLIGENCE COMMUNITY COMPONENTS AS WELL. THE ADMINISTRATION FAVORS COMMUNITY WIDE RELIEF, UNDER WHICH THE DIRECTOR OF NATIONAL INTELLIGENCE WOULD BE AUTHORIZED TO EXEMPT OPERATIONAL AND TECHNICAL FILES OF ANY INTELLIGENCE COMMUNITY ENTITY FROM THE FOIA, EXCEPT IN THE CASE OF REQUESTS BY U.S. PERSONS FOR INFORMATION ABOUT THEMSELVES. THIS WOULD NOT PRECLUDE ANY REQUESTS FOR FINISHED INTELLIGENCE, SINCE ONLY OPERATIONAL AND TECHNICAL FILES COULD BE DESIGNATED FOR EXEMPTION. THE ADMINISTRATION'S PROPOSAL IS SET FORTH IN THE APPENDIX.

AN AREA OF EVEN MORE SERIOUS CONCERN IS THE FAILURE OF S. 2284 TO EFFECTIVELY PROSCRIBE UNAUTHORIZED DISCLOSURES OF THE IDENTITIES OF INTELLIGENCE OFFICERS, AGENTS AND SOURCES. SECTION 701 OF THE BILL WOULD MAKE THIS

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PERVERSE ACTIVITY AN OFFENSE ONLY FOR PERSONS WHO HAVE HAD AUTHORIZED ACCESS TO CLASSIFIED INFORMATION THAT IDENTIFIES INTELLIGENCE PERSONNEL. IT WOULD NOT COVER ACCOMPLICES WHO KNOWINGLY ASSIST IN THE COMMISSION OF THE SECTION 701 OFFENSE, OR OTHERS WHO MAKE UNAUTHORIZED DISCLOSURES OF CLASSIFIED INTELLIGENCE IDENTITIES. THIS FAILURE TO PROVIDE ADEQUATE PROTECTION FOR THE MEN AND WOMEN WHO SERVE OUR NATION IN DIFFICULT AND DANGEROUS ASSIGNMENTS IS, IN MY PERSONAL VIEW, ONE OF THE MOST SERIOUS SHORTCOMINGS OF THE BILL. TO ENSURE THAT THE INTELLIGENCE STRUCTURE WE ARE BUILDING TODAY REMAINS EFFECTIVE IN THE FUTURE, THE ADMINI-STRATION FAVORS BROADER PROTECTION FOR INTELLIGENCE PERSONNEL. WE MUST WEIGH THE ABSENCE OF ANY LEGITIMATE PUBLIC PURPOSE IN THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES AGAINST THE REAL AND CERTAIN DAMAGE SUCH DISCLOSURES

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CAUSE, AND WE MUST ACCEPT THE NECESSITY TO DETER WITH CAREFULLY CRAFTED CRIMINAL SANCTIONS THE UNAUTHORIZED DISCLOSURE BY ANYONE OF THE CLASSIFIED IDENTITIES OF OUR INTELLIGENCE OFFICERS, AGENTS, AND SOURCES. THE ADMINISTRATION'S PREFERRED STATUTORY LANGUAGE FOR SECTION 701 APPEARS IN THE APPENDIX TO MY STATEMENT.

MR. CHAIRMAN, THE ADMINISTRATION ALSO BELIEVES THAT AMENDMENTS TO THE FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) IN ADDITION TO THOSE PROPOSED BY S. 2284 ARE WARRANTED. OVER THE COURSE OF THE CHARTER PROCESS SIGNIFICANT INADEQUACIES IN THE FISA HAVE BECOME APPARENT. THESE DEFICIENCIES WERE NOT FORESEEN AT THE TIME FISA WAS ENACTED AND THEY SHOULD BE REMEDIED AS SOON AS POSSIBLE. THE ADDITIONAL AMENDMENTS INCLUDE:

A. MODIFICATION OF THE TARGETING STANDARDS TO PERMIT TARGETING OF DUAL NATIONALS WHO OCCUPY SENIOR

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POSITIONS IN THE GOVERNMENT OR MILITARY FORCES OF FOREIGN GOVERNMENTS, WHILE AT THE SAME TIME RETAINING UNITED STATES CITIZENSHIP. FREQUENTLY THE ACTIVITY OF SUCH PERSONS WHEN THEY VISIT THE UNITED STATES ON OFFICIAL BUSINESS IS NOT SUCH AS TO BRING THEM UNDER THE QUASI-CRIMINAL TARGETING STANDARD NOW FOUND IN THE FISA.

B. MODIFICATION OF THE TARGETING STANDARDS TO PERMIT TARGETING OF FORMER SENIOR FOREIGN GOVERNMENT OFFICIALS EVEN IF THEY ARE NOT ACTING IN THE UNITED STATES AS MEMBERS OF A FOREIGN GOVERNMENT OR FACTION. AGAIN, THIS PROBLEM WAS NOT ANTICIPATED AT THE TIME THE FISA WAS PASSED, BUT VARIOUS SITUATIONS HAVE ARISEN IN WHICH IT IS CLEAR THAT A FORMER FOREIGN GOVERNMENT OFFICIAL WHO IS PRESENT IN THE UNITED STATES MAY HAVE SIGNIFICANT FOREIGN INTELLIGENCE INFORMATION. UNDER PRESENT LAW SUCH AN OFFICIAL CAN BE TARGETED ONLY IF A MEMBER OF A

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FOREIGN FACTION OR GOVERNMENT.

C. EXTENSION OF THE EMERGENCY SURVEILLANCE PERIOD FROM 24 TO 48 HOURS. RECENT EXPERIENCE INDICATES THAT THE 24-HOUR PERIOD IS INADEQUATE, LEADING TO THE NECESSITY OF DELAYING IMPLEMENTATION OF EMERGENCY SURVEILLANCES.

LANGUAGE TO ACCOMPLISH THESE AMENDMENTS IS SET FORTH IN THE APPENDIX.

MR. CHAIRMAN, I BELIEVE THAT WE ARE IN THE MIDST OF AN IMPORTANT EVOLUTION. WE ARE ATTEMPTING TO INTEGRATE THE LEGISLATURE OF THIS COUNTRY MORE INTIMATELY INTO THE INTELLIGENCE PROCESS THAN HAS EVEN BEEN ATTEMPTED ANYWHERE BEFORE. THIS NEW PROCESS HAS BEEN EVOLVING OVER A NUMBER OF YEARS NOW. I KNOW THAT WE IN THE EXECUTIVE BRANCH ARE PLEASED WITH THE WAY THIS NEW RELATIONSHIP HAS DEVELOPED. I HOPE THAT THE MEMBERS OF THIS COMMITTEE ARE ALSO. THE ENACTMENT OF THIS LEGISLATION WHICH WOULD CHARTER OUR INTELLIGENCE

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ACTIVITIES ANEW WOULD CODIFY THE PRACTICES WE HAVE DEVELOPED AND ENSURE THEIR PERPETUATION. THE MOST IMPORTANT REMAINING DIFFERENCES BETWEEN THE ADMINISTRATION AND THIS DRAFT BILL CONCERN AREAS WHERE THE BILL GOES CONSIDERABLY FURTHER IN REGULATING MATTERS THAT ARE BEING HANDLED SATISFACTORILY. IN THIS LIGHT, WE SHOULD RECOGNIZE THAT:

-- A STRONG SYSTEM OF OVERSIGHT AND ACCOUNTABILITY ALREADY EXISTS AND IS FUNCTIONING EFFECTIVELY. THIS COMMITTEE AND ITS COUNTERPART IN THE HOUSE OF REPRESENTATIVES ARE KEY ELEMENTS IN THAT SYSTEM.

-- EXECUTIVE ORDER 12036 AND THE ATTORNEY GENERAL GUIDELINES WHICH HAVE BEEN ISSUED PURSUANT TO IT SET FORTH RIGOROUS STANDARDS OF CONDUCT FOR INTELLIGENCE ACTIVITIES. THE PROPER EXECUTION OF THE EXECUTIVE ORDER AND THE ATTORNEY GENERAL'S GUIDELINES IS SUBJECT TO CONGRESSIONAL OVERSIGHT.

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-- THE ONE AREA WHERE PRESENT PRACTICES ARE INADEQUATE IS THE SECURITY OF INTELLIGENCE OPERATIONS AND THE PROTECTION OF INTELLIGENCE SOURCES AND METHODS. AN ADEQUATE LEGAL BASIS FOR SUPPORT HERE IS NOT NOW IN EXISTENCE AND IS URGENTLY NEEDED.

I MAKE THESE POINTS BECAUSE THE CHARTER IS A COMPLEX PIECE OF LEGISLATION. CAREFUL STUDY AND ANALYSIS WILL BE REQUIRED BY THOSE WHO HAVE NOT BEEN INTIMATELY INVOLVED IN THE DRAFTING PROCESS FOR THE PAST TWO YEARS. THIS IS, AS WE ALL KNOW, A SHORT LEGISLATIVE YEAR, AND THERE IS SOME QUESTION AS TO WHETHER BOTH HOUSES OF THE CONGRESS WILL BE ABLE TO TAKE UP AND PASS THE CHARTER EVEN IF ALL OF THE OUTSTANDING DIFFERENCES BETWEEN THIS COMMITTEE AND THE ADMINISTRATION ARE SETTLED QUICKLY. IN THIS CONNECTION, LET ME ONCE AGAIN EMPHASIZE THE IMPORTANCE OF REMEMBERING THAT THE CHARTER IS A CAREFULLY CONSTRUCTED WEB OF INTERRELATED PROVISIONS, WHOSE DELICATE BALANCE MUST BE MAINTAINED. INDIVIDUAL CHANGES WHICH WOULD UPSET THIS BALANCE MUST BE

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RESISTED, LEST OUR HARD-WON CONSENSUS BE JEOPARDIZED AND OUR ENTIRE ENDEAVOR ENDANGERED.

MR. CHAIRMAN, THE PRESIDENT, THE INTELLIGENCE COMMUNITY, AND I ARE COMMITTED TO THE CONCEPT OF INTELLIGENCE CHARTER LEGISLATION. I AM CONFIDENT THAT THIS COMMITTEE WILL REPORT OUT A BILL WHICH PROVIDES ESSENTIAL AUTHORITIES, REINFORCES NEEDED GUIDELINES, ENSURES PROPER CONGRESSIONAL OVERSIGHT, CONFIRMS OUR ABILITY TO PROTECT INTELLIGENCE SOURCES AND METHODS, AND CAN BE ENACTED THIS YEAR.

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APPENDIX TO THE STATEMENT OF
THE DIRECTOR OF CENTRAL INTELLIGENCE

Add the following new section in Title I:

PRESIDENTIAL AUTHORITY IN WAR OR HOSTILITIES

Sec. 146. (a) The President may waive any or all of the restrictions on intelligence activities set forth in this Act during any period--

(1) in which the United States is engaged in war declared by Act of Congress; or

(2) covered by a report from the President to the Congress under the War Powers Resolution, 87 Stat. 555, to the extent necessary to carry out the activity that is the subject of the report.

(b) When the President utilizes the waiver authority under this section, the President shall notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate in a timely manner and inform those committees of the facts and circumstances requiring the waiver.

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Amend sections 125 and 142 of Title I as follows:

CONGRESSIONAL NOTIFICATION

Sec. 125. A report of the description and scope of each special activity authorized under section 123(a)(1) and each category of special activities authorized under section 123(a)(2) shall be made in a timely fashion to the House Permanent Select Committee on Intelligence and the Senate Select committee on Intelligence in accordance with section 142 of this Act.

CONGRESSIONAL OVERSIGHT

Sec. 142. (a) Consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches and by law to protect sources and methods, the head of each entity of the intelligence community shall--

(1) keep the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, that entity of the intelligence community;....

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Add the following to subsection 304(j):

In furtherance of the responsibility of the Director to protect intelligence sources and methods, information in files maintained by an intelligence agency or component of the United States Government shall be exempted from the provisions of any law which require publication or disclosure, or search or review in connection therewith, if such files have been specifically designated by the Director to be concerned with: The design, function, deployment, exploitation or utilization of scientific or technical systems for the collection of foreign intelligence or counterintelligence information; Special activities and foreign intelligence or counterintelligence operations; Investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; Intelligence and security liaison arrangements or information exchanges with foreign governments or their intelligence or security services; Provided that requests by United States citizens and permanent resident aliens for information concerning themselves, made pursuant to Section 552 and 552a of title 5, shall be processed in accordance with those Sections. The provisions of this subsection shall not be superseded except by a provison of law which is enacted after the date of this Act and which specifically repeals or modifies the provisions of this subsection.

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Substitute the following for the provision in Title VII:

TITLE VII - PROHIBITING THE DISCLOSURE OF INFORMATION IDENTIFYING CERTAIN INDIVIDUALS ENGAGED OR ASSISTING IN FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES.

STATEMENT OF FINDINGS

Sec. 701. (a) The Congress hereby makes the following findings:

(1) Successful and efficiently conducted foreign intelligence activities are essential to the national security of the United States.

(2) Successful and efficient foreign intelligence activities depend in large part upon concealment of relationships between components of the United States government that carry out those activities and certain of their employees and sources of information.

(3) The disclosure of such relationships to unauthorized persons is detrimental to the successful and efficient conduct of foreign intelligence and counterintelligence activities of the United States.

(4) Individuals who have a concealed relationship with foreign intelligence components of the United States government may be exposed to physical danger if their identities are disclosed to unauthorized persons.

DEFINITIONS

(b) As used in this Section:

(1) "Discloses" means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available to any unauthorized person.

(2) "Unauthorized" means without authority, right or permission pursuant to the provisions of a statute or Executive Order concerning access to national security information, the direction of the head of any department or agency engaged in foreign intelligence activities, the order of a judge of any United States court, or a resolution of the United States Senate or House of Representatives which assigns responsibility for the oversight of intelligence activities.

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(3) "Covert agent" means any present or former officer, employee, or source of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency (i) whose present or former relationship with the intelligence agency is protected by the maintenance of a cover or alias identity, or in the case of a source, is protected by the use of a clandestine means of communication or meeting to conceal the relationship and (ii) who is serving outside the United States or has within the last five years served outside the United States.

(4) "Intelligence agency" means the Central Intelligence Agency or any foreign intelligence component of the Department of Defense.

(5) "Classified information" means any information or material that has been determined by the United States government pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.

CRIMINAL PENALTY

(c) Disclosure of Intelligence Identities.

(1) Whoever knowingly discloses information that correctly identities another person as a covert agent, with the knowledge that such disclosure is based on classified information, or attempts to do so, is guilty of an offense.

(2) An offense under this section is punishable by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(3) There is jurisdiction over an offense under this section committed outside the United States, if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

CRIMINAL PENALTY

(d) Disclosure of Intelligence Identities by Government Employees.

(1) Whoever, being or having been an employee of the United States government with access to information revealing the identites of covert agents, knowingly discloses information that correctly identifies another person as a covert agent, or attempts to do so, is guilty of an offense.

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(2) An offense under this section is punishable by a fine of not more than $25,000 or imprisonment for not more than five years, or both.

(3) There is jurisdiction over an offense under this section committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

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Add the following additional amendments to the Foreign Intelligence Surveillance Act of 1978:

-- Section 101(b)(2) is amended by deleting "or" at the end of (C), changing the period at the end of (D) to a semi-colon, adding "or" at the end of (D), and adding the following new provision:

> "(E) is a current or former senior officer of a foreign power as defined in subsection (a)(1) or (2)"

-- Section 105(e)(2) is amended by inserting "search or" before all appearances of "surveillance," by inserting "physical search or" before all appearances of "electronic surveillance," and by deleting "twenty-four" wherever it appears and inserting in lieu thereof "forty-eight."

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